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ABSTRACT

This report describes a forum to examine policy and practice in current and alternative eligibility systems in special education. It briefly explains the purpose and organization of the forum and outcomes. Outcomes include recommendations for action such as: linking of collaborative multidimensional assessments to intervention and practice, re-examination of the validity of assessment techniques, re-examination of state regulations regarding assessment techniques that are closely aligned with instruction, and changing the funding mechanism of the Individuals with Disabilities Education Act (IDEA) so that funding is based on total census rather than by individual disability. Most of the report consists of appendices, which include a list of forum participants; selections from IDEA pertaining to evaluation/assessment; the forum agenda; and issues identified, organized by cluster. (DB)

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ED 365 027

RE-EXAMINING THE ELIGIBILITY DETERMINATION PROCESS

A Policy Forum to Examine Policy and Practices in Current and Alternative Eligibility Systems in Special Education

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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Convened on May 3rd and 4th, 1993
at the Omni Georgetown Hotel, Washington, DC

by Project FORUM at NASDSE
1800 Diagonal Road, Alexandria VA 22314

for the Office of Special Education Programs
U.S. Department of Education

EC 302652

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RE-EXAMINING THE ELIGIBILITY DETERMINATION PROCESS

A Policy Forum to Examine Policy and Practices in Current and Alternative Eligibility Systems in Special Education

I. PURPOSE AND ORGANIZATION OF THE POLICY FORUM

A. Background and Purpose of the Forum

The accusation is frequently made that assessment in the special education system is focused almost exclusively on qualifying a student for participation in programs and services. As it is now carried out in most communities, eligibility assessment is an expensive and time-consuming process. Repeated calls have been made for revisions in the single dimensional use of assessment for eligibility so that evaluation and testing can contribute to the design of instruction, facilitate the writing of an individualized educational program, and support the measurement of student outcomes.

In the fall of 1992, discussions were held between the Office of Special Education Programs, the National Association of School Psychologists (NASP) and Project FORUM to identify activities to examine alternative approaches to conducting assessments for eligibility and the policy implications of making substantial changes in this process. As a result, Project FORUM, in collaboration with NASP, convened a policy forum for the Office of Special Education Programs to examine these issues and generate a set of prioritized strategies to address them.

B. Preparation for the Meeting

Project FORUM staff worked closely with NASP and OSEP personnel to identify participants for the forum. Efforts were made to include individuals with specific expertise in the area of assessment (e.g., researchers, psychologists), as well as persons whose perspective or experience could contribute to a discussion of all the issues related to eligibility determination. A copy of the list of participants is included as Appendix A.

To assist participants in preparing for the meeting and insure that all had a common knowledge base from which to begin the discussion, Project FORUM staff gathered information on the related issues and prepared a background paper entitled *Re-Examining Eligibility Under IDEA*. In addition to this paper, participants were provided with excerpts from the IDEA and its regulations that pertain to eligibility for special education. (A copy of the background paper is available from NASDSE. A copy of the IDEA excerpts is included as Appendix B.)

C. Process of the Meeting

The forum met on May 3rd and 4th, 1993 at the Omni Georgetown Hotel in Washington, D.C. In addition, a dinner was held at a nearby restaurant on the evening of the first day to continue the discussion begun during the initial session of the forum.

The discussions during the policy forum were focused on how to move from a system that uses the evaluation procedures under IDEA exclusively for gatekeeping, to one that employs assessment results for writing an IEP, designing services, and evaluating student outcomes. Welcoming remarks and an orientation to the tasks of the forum were presented by OSEP, NASP and Project FORUM staff. Then, participants introduced themselves to the group and, as requested in the notification letters sent prior to the meeting, gave a brief description of the nature of their experiences in special education and their perspective on the issues related to assessment and eligibility.

The first day was spent generating a list of issues related to eligibility determination in special education and discussing them in preparation for developing strategies to recommend for improving the process. In the morning, a round robin technique was used to elicit from participants the fundamental issues related to the problem. During the lunch break, Project FORUM staff classified the issues into five clusters to be assigned to the small groups into which the participants were divided for the afternoon session.

During the afternoon, each group refined and reworked the cluster titles and the issues within them and proposed strategies for improving the identified problems. They also recommended specific parties that could take responsibility for each strategy. The next morning, each task group reported on their discussion. The meeting was concluded by OSEP staff with a brief description of the next steps to be taken. (A copy of the agenda used at the meeting and the worksheet is included as Appendix C.)

II. OUTCOMES OF THE MEETING

A. Summary of Input by Participants

Using a notebook computer, Project FORUM staff maintained a process account of discussions that took place during the meeting. Participant input during the round robin was also recorded on easel charts. The notebook was also used to prepare and revise working summaries and other documents for the participants to use throughout the meeting.

During the morning of the first day, participants identified issues through a round robin listing technique. A total of fifty-six issues were identified. During the lunch break, Project FORUM staff organized the morning's output and drafted broad titles for the issue clusters in preparation for the next activity.

The afternoon small group activity resulted in the restructuring of the clusters into twelve major issues and the identification of strategies to address those needs with the parties responsible for initiating action on each. Appendix E contains copies of the listing of original issues arranged by clusters and a table of the results of the small group work. As restated, the recommendation for action include the following:

- Collaborative multi-dimensional assessments must be linked to intervention and practice. The literature contains examples of successful use of this approach that need to be disseminated and used in training for replication.

- The validity of assessment techniques need to be re-examined to correct for bias. Assessment results need to be organized to assure the information is used for planning instruction.

- State regulations need to be re-examined for provisions that would restrict the use of assessment techniques that are more closely aligned with instruction.

- The funding mechanism of IDEA should be changed so that funding is based on a block grant approach by total census rather than by individual student eligibility.

- It is critical that consensus be built at the school-community level on the desired outcomes (goals of instruction) and assessment should be based on the target outcomes. A follow-up system of data should be maintained that also includes post-school outcomes.

- There is a need for regulatory flexibility within special education. Federal regulations should be analyzed to determine those that impede good professional practices. Adoption of the ADA/504 definition of disability (substantial impairment of a life activity) should be considered to replace the current IDEA definition. State regulations should encourage experimentation and outcomes research in special education service delivery.

- Any reform of special education must continue the protection of due process rights. Waivers of regulations should be available for research into new approaches to eligibility and identification. The child's role in decision-making also needs to be explored.

- We need a system that values and includes all children and families. Disincentives for serving ALL children need to be removed, e.g.,"bounty hunting" (funds provided for finding a

disability). Parent training for effective advocacy is a major need and procedural safeguards must be protected with federal enforcement.

- There is a need for staff development in cultural diversity and a preservice training system that prepares teachers to serve ALL children. Both preservice and inservice efforts are needed to strengthen the valuing of difference and diversity.

- Disproportionate placement of African-American children in special education continues as a significant problem. There is a need for accurate data collection and analysis in a timely fashion and the planning of responsive programming to address this issue.

- There are not enough alternatives available to provide for individual differences among children. There is a need for collaboration within and among schools, parents, communities and other educational agencies. Investment needs to be made in prevention and a strong evaluation component is necessary to monitor developmental outcomes of early intervention.

- We are not using existing resources well. We need to redirect more resources to the training of educators including generalists and specialists consistent with a collaborative State plan for training (CSPD).

The proposed strategies for addressing the issues identified a total of 41 different suggestions that, if implemented, would increase the likelihood that the assessment processes would yield information sufficient for the identification of students who were entitled to special education under the IDEA *as well as* contribute to the design of appropriate services and the measurement of student outcomes.

B. Additional Output Based on the Forum

Project FORUM's tasks under its contract with OSEP include a series of syntheses on topics to be selected at the start of each year. One of the syntheses chosen for the current year is "Alternative Assessments for Eligibility." This synthesis will include a literature review and incorporate of information from this policy forum in its content. When this synthesis is completed, it will be shared with those who participated in this policy forum.

APPENDIX A

RE-EXAMINING THE ELIGIBILITY DETERMINATION PROCESS

A Policy Forum to Examine Policy and Practices in Current and Alternative Eligibility Systems in Special Education

May 3rd and 4th, 1993

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APPENDIX B

Selections from the Individuals With Disabilities Education Act Pertaining to Evaluation/Assessment

Sec. 1401

DEFINITIONS

(a) As used in this chapter -
(1) The term 'children with disabilities' means children -
(A) (i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
(ii) who, by reason thereof, need special education and related services.
(B) The term 'children with disabilities' for children aged 3 to 5, inclusive, may, at a State's discretion, include children -
(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
(ii) who, by reason thereof, need special education and related services.

(15) The term 'children with specific learning disabilities' means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(16) The term 'special education' means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including -
(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(B) instruction in physical education.

(17) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from

special education, and includes the early identification and assessment of disabling conditions in children.

(18) The term 'free appropriate public education' means special education and related services that -

(A) have been provided at public expense, under public supervision and direction, and without charge,
(B) meet the standards of the State educational agency,
(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and
(D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

(22) The term 'native language' has the meaning given that term by section 7003(a)(2) of the Bilingual Education Act.

Sec. 1412.

ELIGIBILITY REQUIREMENTS

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) = (1) The State has in effect a policy that assures all children with disabilities the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 1413(b) of this title in effect prior to November 29, 1975, and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that -

(A) there is established (i) a goal of providing full educational opportunity to all children with disabilities, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;
(B) a free appropriate public education will be available for all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1978, and for all children with disabilities between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to children with disabilities aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;
(C) all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;
(D) policies and procedures are established in accordance with detailed criteria prescribed under section 1417(c) of this title; and

(E) any amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

(3) The State has established priorities for providing a free appropriate public education to all children with disabilities, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to children with disabilities who are not receiving an education, and second with respect to children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each child with a disability, and such program shall be established, reviewed, and revised as provided in section 1414(a)(5) of this title.

(5) The State has established (A) procedural safeguards as required by section 1415 of this title, (B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for children with disabilities within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency and shall meet education standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided children with disabilities in the State.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 1413 of this title.

Sec. 1414.

APPLICATION

(a) Requisite features

A local educational agency or an intermediate educational unit which desires to receive payments under section 1411(d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall -

(1) provide satisfactory assurance that payments under this subchapter will be used for excess costs directly attributable to programs which <197>

(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

Sec. 1415.

PROCEDURAL SAFEGUARDS

(a) Establishment and maintenance

Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

(b) Required procedures; hearing

(1) The procedures required by this section shall include, but shall not be limited to -

(A) an opportunity for the parents or guardian of a child with a disability to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit -

(i) proposes to initiate or change, or

(ii) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's

native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

(c) Review of local decision by State educational agency

If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

(d) Enumeration of rights accorded parties to hearings

Any party to any hearing conducted pursuant to subsections (b) and (c) of this section shall be accorded -

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities,

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

(3) the right to a written or electronic verbatim record of such hearing, and

(4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 1417(c) of this title and shall also be transmitted to the advisory panel established pursuant to section 1414(a)(12) of this title.

(e) Civil action; jurisdiction

(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section, and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision

on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4) (A) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.

(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian, if -

(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) the offer is not accepted within ten days; and

(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Whenever the court finds that <197>

(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding, the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(f) **Effect on other laws**

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal statutes protecting the rights of children and youth with disabilities, except that before the filing of a civil action under such laws seeking

relief that is also available under this subchapter, the procedures under subsections (b)(2) and (c) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

Sec. 1418.

EVALUATION AND PROGRAM INFORMATION

(b) (1) In carrying out subsection (a) of this section, the Secretary, on at least an annual basis (except as provided in subparagraph (E)), shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to infants, toddlers, children, and youth with disabilities, and such additional information, from State and local educational agencies, the Secretary of the Interior, and other appropriate sources, including designated lead agencies under subchapter VIII of this chapter (except that during fiscal year 1992 such entities may not under this subsection be required to provide data regarding traumatic brain injury or autism), including -

(A) the number of infants, toddlers, children, and youth with disabilities in each State receiving a free appropriate public education or early intervention services -

(i) in age groups 0-2 and 3-5, and

(ii) in age groups 6-11, 12-17, and 18-21, by disability category;

(B) the number of children and youth with disabilities in each State, by disability category, who -

(i) are participating in regular educational programs (consistent with the requirements of section 1412(5)(B) and 1414(a)(1)(C)(iv) of this title);

(ii) are in separate classes, separate schools or facilities, or public or private residential facilities; or

(iii) have been otherwise removed from the regular education environment;

(C) the number of children and youth with disabilities exiting the educational system each year through program completion or otherwise, by disability category, for each year of age from age 14 through 21;

(D) the number and type of personnel that are employed in the provision of-

(i) special education and related services to children and youth with disabilities, by disability category served; and

(ii) early intervention services to infants and toddlers with disabilities; and

(E) at least every three years, using the data collection method the Secretary finds most appropriate, a description of the services expected to be needed, by disability category, for youth with disabilities in age groups 12-17 and 18-21 who have left the educational system.

Selections from IDEA Regulations Pertaining to Evaluation/Assessment

300.15 Qualified.

As used in this part, the term "qualified" means that a person has met SEA approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

(Authority: 20 U.S.C. 1417(b))

300.16 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

.....

(8) "Psychological services" includes --

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

300.500 Definitions of "consent," and "evaluation," and "personally identifiable."

As used in this part: "Consent" means that --

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with §300.530-§300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

300.503 Independent educational evaluation.

(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of

the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 300.301.

(b) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under §300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) Parent initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation --

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

PROTECTION IN EVALUATION PROCEDURES

300.530 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

(Authority: 20 U.S.C. 1412(5)(C))

300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of §300.532.

(Authority: 20 U.S.C. 1412(5)(C))

300.532 Evaluation procedures.

State educational agencies and LEAs shall ensure, at a minimum, that:

(a) Tests and other evaluation materials --

(1) Are provided and administered in the child's native language or

other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer.

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (Authority: 20 U.S.C. 1412(5)(C))

Note: Children who have a speech or language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each child with a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall --

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the LRE rules in §300.550-§300.554.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §300.340-§300.350.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

Note: Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all

of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

300.534 Reevaluation.

Each SEA and LEA shall ensure --

(a) That the IEP of each child with a disability is reviewed in accordance with §300.340-300.350; and

(b) That an evaluation of the child, based on procedures that meet the requirements of §300.532, is conducted every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

(Authority: 20 U.S.C. 1412(5)(c))

IDEA Regulations on Learning Disability

Definition: [34 CFR 300.7 (b) (10)]

(10) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

ADDITIONAL PROCEDURES FOR EVALUATING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of §300.532, each public agency shall include on the multidisciplinary evaluation team --

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1411 note)

300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if --

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas --

(i) Oral expression;
(ii) Listening comprehension;
(iii) Written expression;
(iv) Basic reading skill;
(v) Reading comprehension;
(vi) Mathematics calculation; or
(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of --

(1) A visual, hearing, or motor impairment;
(2) Mental retardation;
(3) Emotional disturbance; or
(4) Environmental, cultural or economic disadvantage.

300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of --

(1) Whether the child has a specific learning disability;
(2) The basis for making the determination;
(3) The relevant behavior noted during the observation of the child;
(4) The relationship of that behavior to the child's academic functioning;
(5) The educationally relevant medical findings, if any;
(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

APPENDIX C

RE-EXAMINING THE ELIGIBILITY DETERMINATION PROCESS

A Policy Forum to Examine Policy and Practices in Current and Alternative Eligibility Systems in Special Education

May 3rd and 4th, 1993

AGENDA

Monday, May 3, 1993

7:30 Continental Breakfast

8:30 - 9:00 Welcome and Orientation

- Welcoming Remarks
  Trina Osher, Project FORUM
  Lou Danielson, Office of Special Education Programs,
  U. S. Department of Education
  Janet Graden, National Association of School Psychologists

- Orientation to the Agenda and Logistics
  Eileen Ahearn, Project FORUM

9:00 - 10:00 Group Introductions

- Participants will briefly describe their experiences in special education and their interest in the eligibility determination issue

10:00 - 10:15 ♦ ♦ ♦ Break ♦ ♦ ♦

10:15 - 10:45 Task Description

- Setting the stage: Lou Danielson and Eileen Ahearn

10:45 - 12:00 Issues Identification

- Round robin listing and discussion of issues/problems involved in the determination of eligibility for special education services

12:00 - 1:30 Lunch [Staff to organize AM output]

1:30 - 2:00 ♦ Staff recap of morning session output

♦ Small group formation and assignment

2:00 - 4:00 Small Group Activity

4:00 - 4:30 Reconvene Full Group

♦ Collection of information from small groups

♦ Description of planned activities for Tuesday

6:00 Dinner

[Staff to prepare materials for next session]

♦ ♦ ♦

Tuesday, May 4, 1993

7:30 Continental Breakfast

8:00 - 8:30 Report from Task Group #1

8:30 - 9:15 ♦ Discussion, refinement, prioritization

9:15 - 9:45 Report from Task Group #2

9:45 - 10:30 ♦ Discussion, refinement, prioritization

10:30 - 10:45 ♦ ♦ ♦ Break ♦ ♦ ♦

10:45 - 11:15 Report from Task Group #3

11:15 - 12:00 ♦ Discussion, refinement, prioritization

12:00 - 12:30 Conclusion and Description of Next Steps

♦ Lou Danielson, OSEP

APPENDIX D

RE-EXAMINING THE ELIGIBILITY DETERMINATION PROCESS IN SPECIAL EDUCATION:
A Policy Forum to Examine Policy and Practices in Current and Alternative Eligibility Systems

WORKSHEET

AREA:

ISSUE	STRATEGY	RESPONSIBLE PARTY

APPENDIX E
MEETINGS OUTCOMES:
ISSUES LISTED BY CLUSTER AND RECOMMENDATIONS

RE-EXAMINING THE ELIGIBILITY DETERMINATION PROCESS

A Policy Forum to Examine Policy and Practices in Current and Alternative Eligibility Systems in Special Education

May 3rd and 4th, 1993

ISSUES ORGANIZED BY CLUSTERS

1. Assessment, Instrumentation, Method, Process

Expand assessment tools and methods

Racially biased testing methods

Concern over current standardized forms of assessment are not meaningful for parents? We discourage involvement of parents (e.g., discussions over subtests on WISC).

Irrelevance of IQ to instructional purpose as opposed to identification of strengths.

Standardized vs. authentic assessments, which are better?

Linking of assessment to intervention and the measurement of the effectiveness of assessment.

Finding a greater role for the child in assessment of his or her own learning; view assessment in the context of learning as opposed to eligibility; put this in the context of all children

Need to look at process of eligibility determination and need for collaborative, multi-dimensional approach with parents and students very much involved. Categories/medical model does not lend itself to this approach.

The role of child study teams

Questionable validity of brief encounter testing by strangers- especially testing younger children; ties in with need for greater involvement of parents teacher

Will curriculum-based assessment result in more special education students?

Assess for intervention versus eligibility

2. Classroom-based Issues

Issue of withdrawing student from classroom for assessment and not looking at performance in the classroom; findings of assessment do not adequately portray child's real level

Does assessment have any relevance to teachers and parents? Do teachers feel that the assessment really tells them anything useful?

Think about sped as a service not a place

Ongoing and dynamic assessment that drives instruction

Teachers need help in modifying curriculum-what to do?

Assessment vs. curriculum driven instruction-where are child's needs?

Greater role for classroom teachers

3. Federal/State Regulations or Statutes

Current assessment and practices focus on categories so we focus on this for categorical funding; doesn't link with instruction.

How can we reform special education while protecting safeguards for students with disabilities

Need for psycho-social assessment; nothing new -why haven't people been able to amend statute; "procrustean bed, we all fit to the statute rather than vice versa; why is the law the same?

Statute passed to curtail unfettered restrictions on children with disabilities and to involve parents; suspicion has continued, perhaps without foundation, so statute has arguably remained restrictive]

What needs to be changed in State and local regulations/policy

Match of compare requirements of IDEA and Sect. 504

No flexibility in law/regulations

Examine the work descriptions of school psychologist as determined by regulations

Protections can be outcomes based rather than process-based

Do we intend to abolish alternative educational placements in special ed.?

How can funding considerations be separated from sped eligibility and classification

What is happening to the enforcement mechanisms? There are still violations.

Federal regulations are not completely doable-not possible

Emphasis on process rather than outcomes

Discrimination against 3, 4 year olds without cognitive disabilities due to emphasis on education performance

4. Systems-based Issues

Establishing eligibility in a more effective and useful way

Competitive vs. cooperative climate

Need to totally reconceptualize the purpose of assessment - should it really be the "first step"

Audiences for assessment information is varied-needs and demands are varied

Low stakes vs. high stakes testing

Breadth of vision of reform in this area - looking at outcomes rather than categories: who is learning? those who aren't get extra help. "lowest one-third of students" Also, are we going to stay within the special ed. arena or <u>all</u> kids - those who are having difficulty learning for whatever reasons

Are students in special education a product of no alternatives?

Focus on service delivery system (assessment is only part)--maybe system is biased?

Goodness of fit between outcomes-based models for eligibility land cost reduction strategies

Why haven't the issues regarding assessment changed in the last 20 years?

What is the purpose of suggesting changes - are we looking for better IEPs; are we looking for better services or more services? Are we looking for reductions in numbers (e.g., PA). What changes do we want to make in relation to Federal regs.

How to construct a system for eligibility without requirement to fail?

Put federal money into training rather than identification

Unfortunate and unanticipated outcomes of high-stakes testing

5. Values/Bias

Most of process is in "problem-finding" (search for pathology) need to shift to problem solving and away from medical model and the related categories (categories are related to deficits/medical model)

Intolerance of human variation

Construct a system that can be sensitive to (correct for) biases we bring to the process

Abandon search for pathology (medical model)

Values and beliefs about (1) children, and (2) assessment are crucial to re-examining assessment (focus on children's needs

Inordinate (disproportionate) number of African American children in special education classes based on sole criteria of one intelligence test (note: referring to African American children not "minority" children)

Better planning or better assessments-what is needed?

Re-examine mission of schools and what we want for our children

Education for all children... all means all

POLICY FORUM RE-EXAMINING ELIGIBILITY DETERMINATION
RESULTS OF SMALL GROUP WORK
DAY 2 (MAY 4, 1993)

Group 1

Issues	Strategies	Responsible Parties
Link collaborative multi-dimensional assessment to intervention and practice	1. Identify this term (the dimensions). 2. Identify best practices in the literature concerning the dimensions (use what we know). 3. Identify audiences for the assessment information (marketing). 4. Implement and evaluate the process (research). 5. Design different presentations for communicating the results. 6. Training.	Universities/school collaboration in developing the process Special education teachers Regular education teachers Principals Parents Children Psychologists
Validity of assessment techniques	1. Test validity of observation methods or tests to correct for bias and organize this information for users. 2. Prioritize types of validity that might be relevant to the purpose of the assessment.	NASP, University, SEA
Assessment linked to intervention	1. Train personnel: preservice, inservice. 2. Re-examine state regulations that restrict this kind of assessment.	University: preservice LEA personnel, SEA personnel, advocacy groups, professional organizations
Assessment for eligibility	1. Change the statute as it pertains to the funding mechanism. 2. Block grant by census.	OSEP, Advocates
Need to determine desired outcomes (goals of instruction) before assessment	1. Consensus building at school-community level. 2. Disseminate research on outcomes to stakeholders. 3. Follow up data system including post school outcomes.	Community stakeholders

Issues	Strategies	Responsible Parties
Group 2		
Regulatory flexibility	1. Adopt ADA/504 definition of disability (substantial impairment of a life activity). 2. Analysis of federal regulations to determine those that impede good professional practices. 3. Encourage state and local experimentation and outcomes research in special education delivery with state regulations.	1. Congress and Department of Education 2. Dept of ED/OSERS 3. SEAs, IEUs, LEAs
Reform special education while protecting due process	1. Bilateral waiver of MFE (multidisciplinary evaluation) for identification and eligibility. 2. Identification of non-waivable procedural safeguards. 3. Exploration of child's role in decisionmaking.	Department of Education
Group 3		
We need a system that values and includes all children and families	1. Remove disincentives for serving all children: a. Replace bounty hunting ($ for finding a disability), b. Replace funding failure with support for prevention/intervention, c. Hold accountable for outcomes for all. 2. Protect procedural safeguards with federal enforcement. 3. Parent training for advocacy. 4. Communication with stakeholders, real involvement and ownership (including alternative communication vehicles and mediums).	1. Federal, State and Local responsibilities for each varies at each level.
Valuing difference and diversity 33	1. Staff development in cultural diversity. 2. Preservice training for a system that serves ALL. 3. Parent/community training and information. 4. Recruitment from diverse segments of society.	Federal, State, Local Universities Professional groups PTA Advocacy groups Business Etc. 34

Issues	Strategies	Responsible Parties
Disproportionate placement of African-American children in special education	1. Need data reported and analyzed in timely fashion. 2. Responsive programming with range of options available (use instructional services team approach to avoid referral). 3. Parent advocacy for informed decisionmaking.	State, local
Not enough alternatives available	1. Collaboration within the school and among schools, communities and other educational agencies, parents. 2. Problem solving framework for the whole building. 3. Training - inservice and preservice. 4. Use of statewide technical assistance centers. 5. More prevention efforts. (e.g., be ready for problems through use of long term data). 6. Training for families Re: transition (0-3 to 3-21) on how the system works and due process. 7. Evaluation component needs to be in place early to monitor developmental outcomes including but not exclusive of cost/benefit analysis of effective early intervention.	Local, supported and facilitated by State
Are we using our resources well?	1. Redirect more resources to the training of educators (specialists, generalists and support personnel) as consistent with a collaborative state plan for training (CSPD). 2. Use school resources differently, e.g, collaboration, prevention.	Federal, State, Local University and professional groups